

# TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

03 — 002

2. STATE:

Puerto Rico

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL  
SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

August 13, 2003

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

1902 (a) (58) 1902 (w)

7. FEDERAL BUDGET IMPACT:

a. FFY \_\_\_\_\_ \$ \_\_\_\_\_  
b. FFY \_\_\_\_\_ \$ \_\_\_\_\_

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Pages 45 (a) and 45 (b)  
Attachment 4.34 A

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):

Pages 45 (a) and 45 (b)  
Attachment 4.34A

\*\* See Remarks

10. SUBJECT OF AMENDMENT:

Advance Directives

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:

Not submitted to Governor's Office

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Johnny Rullán, MD, FACPM

14. TITLE:

Secretary of Health

15. DATE SUBMITTED:

September 26, 2003

16. RETURN TO:

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

SEP 30 2003

18. DATE APPROVED:

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

08/13/03

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

Sue Kelly

22. TITLE: Associate Regional Administrator  
Division of Medicaid and Children's Health

23. REMARKS:

Originally submitted pages have been revised, replaced and approved.

Revision: HCFA-PM-91-9  
October 1991

(MB)

OMB No.:

State/Territory: [Puerto Rico]

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS  
FOR MEDICAL ASSISTANCE

The following is a description of the law of the state (whether statutory or recognized by courts of the state) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether law allows for a health care provider or agent of the provider to object to implementation of advance directives on the basis of conscience.

Public Law No. 160, is the state law establishing the policies and procedures related to advance directive for the Commonwealth of Puerto Rico, it was approved on November 17, 2001. In general terms, it acknowledges the right of capable adults to make decisions concerning medical or surgical treatment, such as refusing or, accepting a treatment and instructing designated representatives with advance directives of treatment in the event of suffering terminal health conditions or persistent vegetative state through a durable power of attorney designation. The Act stipulates the purposes, procedures, qualifications for the representative's designation and other documentation requirements that are to be followed by the medical and institutional providers for the compliance with the mandated right and its implementation. It does not expressly provide for objection on the basis of conscience by provider nor agent, although it expressly emphasizes the criteria and principle that the statute does not authorize euthanasia or death by mercy.

TN # 03-02  
Supersedes TN # 92-9

Effective Date 08/13/03  
Approval Date ~~FEB 24 2004~~

45(a)

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Citation

1902 (a)(58)

1902(w)

4.13

(e)

For each provider receiving funds under the plan, all the requirements for advance directives of section 1902(w) are met:

- (1) Hospitals, nursing facilities, providers of home health care or personal care services, hospice programs, managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans (unless the PAHP excludes providers in 42 CFR 489.102), and health insuring organizations are required to do the following:
  - (a) Maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization about their rights under State law to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives.
  - (b) Provide written information to all adult individuals on their policies concerning implementation of such rights;
  - (c) Document in the individual's medical records whether or not the individual has executed an advance directive;
  - (d) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
  - (e) Ensure compliance with requirements of State Law (whether

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45(b)

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statutory or recognized by the courts) concerning advance directives; and

- (f) Provide (individually or with others) for education for staff and the community on issues concerning advance directives.
- (2) Providers will furnish the written information described in paragraph (1)(a) to all adult individuals at the time specified below:
- (a) Hospitals at the time an individual is admitted as an inpatient.
  - (b) Nursing facilities when the individual is admitted as a resident.
  - (c) Providers of home health care or personal care services before the individual comes under the care of the provider;
  - (d) Hospice program at the time of initial receipt of hospice care by the individual from the program; and
  - (e) Managed care organizations, health insuring organizations, prepaid inpatient health plans, and prepaid ambulatory health plans (as applicable) at the time of enrollment of the individual with the organization.
- (3) Attachment 4.34A describes law of the State (whether statutory or as Recognized by the courts of the State) concerning advance directives.

\_\_\_\_ Not applicable. No State law or court decision exist regarding advance directives.

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